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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,400	11/21/2003	Charles Christopher Thorpe	3000177 / 703454-2001	2557

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OMAHA, NE 68154

EXAMINER
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VAN, QUANG T

ART UNIT	PAPER NUMBER
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3742

MAIL DATE	DELIVERY MODE
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05/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/719,400

Applicant(s)

THORPE ET AL.

Examiner

Quang T. Van

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 15-22, 24-26, 29, 39-58, 61, 62, 75, 76, 79, 80, 83, 84 and 87-116 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 15-22, 24-26, 29, 39-58, 61, 62, 75, 76, 79, 80, 83, 84 and 87-116 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 15, 18-19, 24-26, 29, 39-41, 45-47, 50, 53, 55-58, 61-62, 79-80, 83-84, 87-99 and 100-116 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action. Levinson discloses, figure 7, a microwave cooking in a chamber kit comprising a microwaveable housing having a top housing section (12) and an bottom housing section (12); each housing section (12,14) defining an interior space (40, 41), the top housing section (12) being placed on top of the bottom housing section (14) to close the microwaveable housing; and a grill (46) positioned within said bottom housing section (14) and suspended above a bottom interior surface (44) of said lower housing section (14) said grill (46) defining a plurality of apertures (col. 11, lines 24-27) and having a surface that includes a metalized susceptor material (col.5, lines 6-10) for grilling the food item, wherein said bottom interior surface (44) which is a portion of said lower housing section (14) and said grill (46) are structurally configured so that steam generated by heating positioned on said bottom interior surface (44) of said lower housing section (14) below said grill (46) passes upwardly from said interior space (41) of said lower housing section (14), through said grill apertures, onto at least a bottom surface of the food item, and into said interior space (40) of said upper housing section

(col. 11, lines 23-44). However, Levinson does not disclose a gelatinous ingredient for said food item positioned in the lower housing section, wherein said gelatinous ingredient is not extracted from the food item. Wang discloses a gelatinous ingredient (21) for said food item positioned in the lower housing section (14), wherein said gelatinous ingredient is not extracted from the food item (col. 11, lines 32-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson a gelatinous ingredient for said food item, wherein said gelatinous ingredient is not extracted from the food item as taught by Wang in order to add flavor to the cooking item when cooking. With regard to claims 6-14, 31-38, a solid, semi-solid gelatinous ingredient or flavoring material is considered material or article worked upon by apparatus. "Expressions relating the apparatus to contents thereof during an intended operation are no significance in determining patentability of the apparatus claim". *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969).

Furthermore, "Inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims". *In re Young*, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, a solid, semi-solid gelatinous ingredient or flavoring material is considered material or article worked upon which does not limit apparatus claims, therefore no patent weight is given to these claims.

3. Claims 3, 42-44, 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action, and further in view of Koochaki (US 6,229,131). Levinson/Wang

disclose substantially all features of the claimed invention except a housing including a vent. Koochaki discloses a microwave-cooking grill (100) having a housing including a vent (186). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang a housing including a vent as taught by Koochaki in order to release the steam from the cooking housing.

4. Claims 16-17, 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action, and further in view of Barnes (US 6,608,292). Levinson/Wang disclose substantially all features of the claimed invention except a connector that couples said lower and upper microwave housing sections. Barnes discloses a connector (212) that couples said lower (104) and upper microwave housing sections (102). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang a connector that couples said lower and upper microwave housing sections as taught by Barnes in order to connect the upper and the lower housing section together.

5. Claims 48-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action, and further in view of Craft (US 6,018,157). Levinson/Wang discloses substantially all features of the claimed invention except an inert gas being added into said microwaveable housing. Craft discloses an inert gas being added into said microwaveable housing (col. 4, lines 10-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang

an inert gas being added into said microwaveable housing as taught by Craft in order to repeated cooking cycles without requiring replacement and without significant degradation of the microwave grill.

6. Claims 75-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action, and further in view of Thompson (US 3,669,688). Levinson/Wang disclose substantially all features of the claimed invention except the gelatinous ingredient including a corn syrup ingredient and an agar ingredient. Thompson discloses gelatinous ingredient including a corn syrup ingredient and an agar ingredient (col. 1, lines 58-72 and col. 2, lines 1-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang gelatinous ingredient including a corn syrup ingredient and an agar ingredient as taught by Thompson in order to add flavor to the cooking item.

***Response to Amendment***

7. Applicant's arguments filed 03/23/2007 have been fully considered but they are not persuasive.

Applicant argue "that independent Claims 1, 15, 39, 53 and 99 include elements that have not been disclosed by any of the references cited by the Patent Office, either alone or in combination. For example, independent Claims 1 and 15 of the present invention each generally recite, "a gelatinous ingredient that is not extracted from the food item being prepared..." Independent Claims 39, 53, and 99 of the present invention each generally recite, "a gelatinous ingredient for the food item, wherein the gelatinous

ingredient is not extracted from the food item being prepared...". Neither Levinson or Wang disclose, teach, or suggest individually or in combination a gelatinous ingredient", recited in REMARKS/ARGUMENTS, page 18, lines 10-19. The Examiner disagrees. Levinson (US 4,923,704) in view of Wang et al (US 6,463,844) both cited in previous action. Levinson discloses substantially all features of the claimed invention as shown in above rejection except a gelatinous ingredient for said food item positioned in the lower housing section, wherein said gelatinous ingredient is not extracted from the food item. Wang discloses a gelatinous ingredient (21) for said food item positioned in the lower housing section (14), wherein said gelatinous ingredient is not extracted from the food item (col. 11, lines 32-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson a gelatinous ingredient for said food item, wherein said gelatinous ingredient is not extracted from the food item as taught by Wang in order to add flavor to the cooking item when cooking. The cooking oil discloses in Wang is gelatinous ingredient which is not extracted from the food item. The cooking oil is in the form of gelatinous in which it is depending on its viscosity and temperature. For example, if user places cooking oil in refrigerator it is transformed into gelatinous form.

Applicants also argue that "Neither Levinson, Wang, or Craft disclose, teach, or suggest individually or in combination an inert gas". The examiner disagrees. Levinson/Wang discloses substantially all features of the claimed invention except an inert gas being added into said microwaveable housing. Craft discloses an inert gas being added into said microwaveable housing (col. 4, lines 10-18). It would have been

obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang an inert gas being added into said microwaveable housing as taught by Craft in order to repeated cooking cycles without requiring replacement and without significant degradation of the microwave grill.

Applicants also argue that "Neither Levinson, Wang, or Thompson disclose, teach, or suggest individually or in combination a gelatinous ingredient comprised of a corn syrup ingredient and an agar ingredient". The examiner disagrees.

Levinson/Wang disclose substantially all features of the claimed invention except the gelatinous ingredient including a corn syrup ingredient and an agar ingredient.

Thompson discloses gelatinous ingredient including a corn syrup ingredient and an agar ingredient (col. 1, lines 58-72 and col. 2, lines 1-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in Levinson/Wang gelatinous ingredient including a corn syrup ingredient and an agar ingredient as taught by Thompson in order to add flavor to the cooking item.

Further, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are



evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

Finally, applicants argue that a metal baking pan not viable in microwave disclosed in Wang (Wang, Col. 11, Lines 20-25) cannot combine with the metal microwave steam cooking disclosed in Levinson (Levinson, Title and Abstract). The examiner disagrees. One ordinary skill in the art should know metal devices now can be use inside microwave chamber for cooking, and the metal microwave steam cooking kit disclosed in Levinson made of aluminum material, which uses for cooking inside microwave chamber and a metal baking pan disclosed in Wang also made of aluminum material (col. 11, lines 20-25); therefore, it should be good to use inside microwave oven, since both of devices use with same metal material, aluminum. Yamada et al (US 5,107,087) disclose a cooking container for use in heating food in a microwave oven. Further, nowhere in the claims have such limitations, which require materials as applicant mentioned (Present Application, Page 7, lines 19-24).

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3742

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Yamada et al (US 5,107,087) discloses a cooking container for use in heating food in a microwave oven.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang T. Van whose telephone number is 571-272-4789. The examiner can normally be reached on 8:00Am 7:00Pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

QV

QV

May 8, 2007



Quang T Van  
Primary Examiner  
Art Unit 3742